



# PUBLIC NOTICE

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DA 07-5081  
Released: December 20, 2007

## DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF ASSETS OF HBC TELECOM, INC. BY HIAWATHA BROADBAND COMMUNICATIONS, INC.

### NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 07-262

Comments Due: January 3, 2008  
Reply Comments Due: January 10, 2008

On November 9, 2007, Hiawatha Broadband Communications, Inc. (HBC) and TDS Metrocom, LLC, the successor in interest to HBC Telecom, Inc. (Telecom) (together, Applicants), filed an application pursuant to section 63.03 of the Commission's rules requesting approval for the acquisition of assets of Telecom by HBC.<sup>1</sup> Applicants consummated the transaction at issue in October 2003, but did not seek Commission consent prior to the transfer of assets.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(1)(ii) of the Commission's rules because HBC was not a provider of telecommunications services when the transfer of assets occurred in 2003.<sup>3</sup> However, given that the application for approval was filed four years after the Applicants consummated the transaction, the Bureau finds, pursuant to section 63.03(c)(v), that the application requires further analysis to determine if

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<sup>1</sup> 47 C.F.R. § 63.03; *see* 47 U.S.C. § 214. Applicants have also filed applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related applications.

<sup>2</sup> The original application sought *nunc pro tunc* approval of this transaction. On November 30, 2007, Applicants submitted an amendment to the application removing the request for *nunc pro tunc* approval and clarifying certain issues in response to queries from Commission staff. *See* Letter from Robert G. Morse, Counsel for Hiawatha Broadband Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-262 (filed Nov. 30, 2007). Applicants also filed a request for Special Temporary Authority (STA) to allow HBC to continue to provide service to its customers while this application is pending. *See* Request for Special Temporary Authority, WC 07-262 (filed Nov. 26, 2007) (STA Request). The Wireline Competition Bureau (Bureau) granted the STA request on December 7, 2007 for a period of sixty days. Any action on this domestic section 214 application does not preclude or prejudice any enforcement action related to an unauthorized transfer of control.

<sup>3</sup> 47 C.F.R. § 63.03(b)(1)(ii).

the proposed transfer would serve the public interest, and it is therefore not subject to streamlined processing.<sup>4</sup>

At the time of the transaction, Telecom was a Minnesota corporation and a nondominant provider of domestic interstate services. Until October 2003, Telecom provided competitive local and interexchange services directly to HBC's customers in Minnesota through various operating and marketing agreements. Telecom was a wholly-owned subsidiary of Chorus Networks, Inc., and was merged into Chorus Networks, Inc. in 2005.<sup>5</sup>

HBC, a Minnesota corporation, provides competitive local exchange and interexchange services in three small communities in rural Minnesota.<sup>6</sup> The following U.S. citizen and U.S.-based entity own at least 10 percent of the equity of HBC: Robert A Kierlin (41.44 percent) and Winona Community Foundation (26.17 percent).

In October 2003, pursuant to the terms of an Asset Purchase Agreement, HBC purchased the assets and customer accounts relating to Telecom's telecommunications business, and upon consummation, HBC began providing telecommunications services directly to the former Telecom customers in Telecom's stead. Applicants state that a recent review of HBC's existing regulatory authorizations and services revealed that it had inadvertently failed to obtain the Commission's approval prior to consummating this transfer of assets.

Applicants assert that a grant of the application will serve the public interest, convenience, and necessity because the transaction resulted in no harm to competition in any relevant market and was seamless to customers, as services continued to be provided under the HBC trade name and pursuant to pre-existing rates, terms, and conditions.

## **GENERAL INFORMATION**

The Wireline Competition Bureau finds, upon initial review, that the transfer of assets identified herein is acceptable for filing as a non-streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 C.F.R. § 63.03(a), interested parties may file comments **on or before January 3, 2008**, and reply comments **on or before January 10, 2008**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal:

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<sup>4</sup> See 47 C.F.R. § 63.03(c)(v).

<sup>5</sup> Chorus Networks, was later converted to Chorus Networks LLC, which was subsequently merged into TDS Metrocom, LLC, which in turn is a wholly-owned subsidiary of TDS Telecommunications Corporation.

<sup>6</sup> Winona (population 35,000), St. Charles (population 3,500), and Wabasha (population 2,500).

<http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

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**In addition, email one copy of each pleading to each of the following:**

- 1) The Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, [www.bcpweb.com](http://www.bcpweb.com); phone: 202 / 488-5300; fax: 202 / 488-5563;
- 2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A103, Washington, D.C. 20554; [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- 3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; [alexis.johns@fcc.gov](mailto:alexis.johns@fcc.gov);
- 4) David Krech, International Bureau, Policy Division, 445 12<sup>th</sup> Street, S.W., Room 7-A664, Washington, D.C. 20554; [david.krech@fcc.gov](mailto:david.krech@fcc.gov), and
- 5) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554, [jim.bird@fcc.gov](mailto:jim.bird@fcc.gov).

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; telephone: 202 / 488-5300; fax: 202 / 488-5563; email: [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com); url: [www.bcpiweb.com](http://www.bcpiweb.com).

For further information, please contact Tracey Wilson-Parker at 202 / 418-1394 or Alex Johns at 202 / 418-1167.

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